

Katharine Morice, Widow, and Executrix of Humphrey Morice, late of London, Merchant, deceased, Ann Morice, Judith Morice, and Elizabeth Morice, an Infant, Children of the said Humphrey Morice by Judith his first Wife, Sir Thomas Lee, Bart. and his Children, Thomas, William and Ann Lee, Infants, Ann Sandes, Widow, John Claxton, and Sarah his Wife, Brown Claxton their Son, Ann Colemore, Wife of Thomas Colemore, by her next Friend, and Stephen Ram and Isaac Milner, her Trustees, James Henckell, Mary Glover and Henry Voght, William Snelgrave, James Pearce, in his own Right, and as Executor of Jeremiah Pearce, deceased, Robert Moore, and Mary his Wife, Executrix of John Dagg, deceased, and Elizabeth Grove, Administratrix of Joseph Grove, deceased, Theodosia Crowley, Joseph Gascoigne Nightingale, Dame Sarah Shaw, Mary Shaw, Jane Shaw, Richard Arnold, Thomas Groffe, George Coldham, Thomas White, Samuel Massey, and Susannah his Wife, Richard Lechmere, John Lateward, Jonathan Smith, Hester Wickham, Peter Delamotte, Samuel Davenport, James Rutlin, Joseph Broad, Thomas Dinely, John Cook, Ann Job, John Thompson, John Chapman, Benjamin Weale, Lawrence Victorin, Francis Hayford, John Beardoe and Bearcroft Beardoe, Henry Sewdley, Margaret Greaves, Widow, and Executrix of John Greaves, deceased, Thomas Hardwell, Abraham Rutland, Thomas Poole, Sherman Godfrey, Joseph North, John Fell the elder, and John Fell the younger, - - -

Respondents.

A N D

The said James Henckell, Mary Glover, and Henry Voght, William Snelgrave, James Pearce, in his own Right, and as Executor of Jeremiah Pearce, deceased, Robert Moore, and Mary his Wife, Executrix of John Dagg, deceased, and Elizabeth Grove, Administratrix of Joseph Grove, deceased, - - -

Appellants.

All the said other Parties above-named, - - - Respondents.

A N D

The said Theodosia Crowley, and Joseph Gascoigne Nightingale, - - - Appellants.

All the said several other Parties above-named, - - - Respondents.

A N D

The said Benjamin Weale, in his own Right, Lawrence Victorin and Francis Hayford, John Beardoe and Bearcroft Beardoe, Margaret Greaves, Widow, and Executrix of John Greaves, deceased, Thomas Hardwell, Abraham Rutland, Sherman Godfrey, Joseph North, Benjamin Weale and James Pearce, Executors of John Pearce, deceased, Thomas White, Samuel Massey, and Susanna his Wife, which said Thomas White and Susanna Massey are Executors of Richard Blincko, deceased, John Fell the elder, and John Fell the younger, Executors of John Rice, deceased, - - -

Appellants.

The said several other Parties above-named, - - - Respondents.

The CASE of the said Katharine Morice, Widow, and Executrix of Humphrey Morice, late of London, Merchant, deceased, One of the Respondents in all the said Four Appeals.

THE said Humphrey Morice, for many Years before his Decease, carried on a very extensive Trade to the Coast of Africa, and all the British Plantations in America, and also to Holland, Russia and the East Indies, and other Places. The said Humphrey Morice died, having made his Will, and appointed the Respondent Katharine Morice his Widow, sole Executrix thereof, who, soon after his Death, proved the same. The said Humphrey Morice, at his Death, left Effects of great Value in Jamaica and other Parts of the West Indies, and Places abroad, whereto he traded, and many Ships on the Sea bound for Africa and the West Indies, with rich Ladings, and also a real and very considerable personal Estate at home here in England, particularly 3000*l.* Bank Stock; but notwithstanding the large Estate, Mr. Morice left so many Debts due to Creditors here in England, besides such as were due to his Creditors abroad, that all his Estate and Effects in England, and which there are any Hopes of recovering from abroad, will prove deficient to satisfy his Creditors.

16 Nov. 1731. Hum. Morice died.

General State of Mr. Morice's Debts.

Trust-Monies due to the three Miss Morices, Sir Thomas Lee, and his Children, Ann Sandes, and Mr. Claxton, his Wife and Son.

Trust-Money due to Mrs. Colemore.

Debt due to the Bank.

Debt due to Henckell, Glover and Voght, Snelgrave, the two Pearces, Dagg and Grove.

Debt due to Crowley and Nightingale.

Debt due to Weale and others.

15 Dec. 1731. Bill of Miss Morice and others.

4 Oct. 1720. Legacies given by Mr. Brown's Will.

For Mr. Morice, as afterwards appeared, was, at his Death, indebted in the Sum of 16,000*l.* upon Specialties here in England, and in upwards of 130,000*l.* on simple Contract; and, amongst his simple Contract Debts, there was due from him on the 15th Dec. 1731. to the Respondents his three Daughters by his first Wife, being Trust-Money of theirs in his Hands, for Principal and Interest, 2737*l.* 11*s.* 9*d.*—There was also due to the Respondents Sir Thomas Lee's Children, for Principal and Interest to the same Time, 937*l.* 8*s.* 9*d.*—There was also due to the Respondent Ann Sandes, for Principal and Interest, 4648*l.* 6*s.* 9*d.*—And to the Respondents John Claxton and his Wife and Son, for Principal and Interest, 16767*l.* 3*s.* amounting together to 58,168*l.* 10*s.* 3*d.* the Principal of all which Sums were Trust-Monies of the said several Respondents in the Hands of the said Humphrey Morice.

Mr. Morice was likewise indebted to the Respondent Ann Colemore, on Account of Trust Stocks and Monies of her's with which he had been intrusted, in 500*l.* East India Stock, 864*l.* 9*s.* 8*d.* South Sea Stock, 319*l.* 13*s.* South Sea Annuity Stock, and in 104*l.* 10*s.* 2*d.* paid to him in Cash, and in 16*l.* 1*s.* 7*d.* Dividends, received by him, and unaccounted for at his Decease.

The Appellants the Bank of England also pretended, That Mr. Morice was indebted to them by simple Contract, in 29,000*l.* and upwards.

Mr. Morice was likewise indebted by simple Contract, to the Appellant James Henckell, in 2089*l.* 5*s.*—To Mary Glover and Henry Voght, in 1440*l.*—To William Snelgrave, for Principal and Interest, in 1948*l.*—To James Pearce, for Principal and Interest, 2115*l.*—To Jeremiah Pearce, for Principal and Interest, 935*l.* 16*s.*—To John Dagg, 1015*l.* 18*s.*—To Joseph Grove, 4103*l.* 6*s.* 5*d.*—amounting together to 13,647*l.* 5*s.* 5*d.*

Mr. Morice was also indebted by simple Contract, to the Appellants Theodosia Crowley and Joseph Gascoigne Nightingale, in 1507*l.* 0*s.* 5*d.* Mr. Morice was also indebted by simple Contract, to the Appellants Benjamin Weale, Lawrence Victorin, and the rest of that Set of Appellants, in several Sums of Money, amounting together to 6682*l.* 17*s.* 8½*d.*

Mr. Morice was also indebted by simple Contract, to the other Respondents, in several considerable Sums of Money, and also to several others, who are no Parties to any Suit that hath been hitherto commenced, either in Law or Equity.

Mr. Morice being thus greatly indebted, and his Creditors, upon his Death, finding how greatly his Debts exceeded his Effects, they all of them (as it was natural for them to do) considered of the most effectual and expeditious Means to secure themselves, and Bills in Equity and Actions at Law, to a great Number, were brought against the Respondent Mrs. Katharine Morice, the Testator's Executrix, and before any Suit was commenced, either in Law or Equity, by any other of Mr. Morice's Creditors, viz.

The Respondents Ann, Judith and Elizabeth Morice, the Testator's said three Daughters by his first Wife, Sir Thomas Lee and his said Children, Thomas, William and Ann Lee, John Claxton, Esq; and Sarah his Wife, and Brown Claxton their Son, and Ann Sandes, Widow, exhibited their Bill in the Court of Chancery against this Respondent as Executrix of her said late Husband, setting forth, amongst other Things, That John Brown, Merchant, by his Will, dated 4 Octob. 1720. gave to the said Humphrey Morice 16,500*l.* in Trust for his five Daughters, (of whom the said Ann, Judith and Elizabeth were the only Survivors) to be paid in manner

manner in the Bill stated; and 5000*l.* in Trust for the *Claxtons*, as therein mentioned; and 10,000*l.* in Trust for the *Lees*, as therein mentioned; and gave to the said *Ann Sander* 3000*l.* and after some other Legacies, made Mr. *Morice* residuary Legatee of all his Estate, and Executor of his said Will, and setting forth what had been paid off in part, and what remained due to the several Parties, and that no Part of the Trust Money due to his Daughters had been paid, but that Mr. *Morice* had duly paid the Interest of the other remaining Trust Money, as it became due, to his Death; and that Mrs. *Morice* had often heard her Husband own and declare, That Mr. *Brown* not only left Assets to pay all his Legacies, but also a very great Surplus; and that he had the Benefit thereof, as residuary Legatee, and interrogated her by the said Bill to several other Particulars relating to her said Husband's Declarations, Accounts and Affairs, and also relating to *Brown's* Estate; and having in their said Bill specified the particular Sums that were due to each of them respectively from the said Testator at his Death for Principal and Interest, and from thence, to the Time of filing their said Bill, amounting in the whole together, to the said Sum of 58,168*l.* 10*s.* 3*d.* and thereby prayed a Decree for Payment of the same.

22. Jan. 1731. Mrs. Morice's Answer.

The Respondent Mrs. *Katharine Morice*, the Executrix, put in her Answer to such Bill, according to the Truth of the Facts, to which by the Bill she was required to give her Answer upon Oath, and stated what appeared upon Inspection of her Husband's Accounts and Papers, and set forth a Copy of such of them as were requir'd; and further disclosed by her said Answer the Uncertainty of her Testator's Assets, and the true Amount of his Debts by Specialty and simple Contract then come to her Knowledge, and said she could not admit Assets to answer the said Plaintiff's Demands, but was willing to administer her said Testator's Estate in a due Course of Administration, as far as his Assets would extend, and submitted the whole to the Judgment of the Court.

25. Jan. 1731. Decree in that Cause.

The said Cause came on to be heard before his Honour the Master of the Rolls, upon Bill and Answer, when it was, amongst other things, decreed by the Right Honourable the Master of the Rolls, That this Respondent should, out of the Assets of her said Husband, pay the said several Sums demanded by the said Plaintiff's Bill in a Course of Administration; and for that Purpose, that she should account for the Personal Estate of her said late Husband, which had or should come to her Hands; and that subsequent Interest should be carried on for the several principal Sums mentioned in the Decree, from the Time of filing the said Bill, till the said Accounts should be taken, and for taking whereof, all proper Directions were given; which Decree was afterwards inrolled, and this Respondent served with a Writ of Execution thereof. And this Respondent having then got in more Effects of the Testator's than were sufficient to pay off the Specialties, she did, in Obedience to, and in Pursuance thereof, and in Part Performance of the said Decree, pay out of her Husband's Assets 10,111*l.* to the said *Ann* and *Judith Morice* (who were of Age) in Satisfaction of Part of what was so decreed to be due to them.

26. Dec. 1731. Colemore's Bill.

The Respondent *Ann Colemore*, Wife of *Thomas Colemore*, by her next Friend, exhibited her Bill against the Respondent *Catherine Morice*, as Executrix of her late Husband, setting forth, amongst other Things, That several Quantities of *South Sea Stock*, *South Sea Annuities*, and *East India Stock*, were transferr'd, and several Sums of Money paid to the said *Humphrey Morice*, in Trust for her separate Use, and upon such Trusts as therein mentioned, exclusive of her said Husband, and that a great Part thereof remained due, viz. 862*l.* 3*s.* 6*d.* *South Sea Stock*, 319*l.* 13*s.* *South Sea Annuities*, 500*l.* *East India Stock*, 161*l.* 1*s.* 7*d.* due for Dividends thereof, together with what other Dividends were due thereon, and 104*l.* 10*s.* 2*d.* being Money paid to the said *Humphrey Morice*, as in the said Bill specified, with Interest; and thereby prayed, that the said several Stocks, or so much thereof as remained in the Name of the said *Humphrey Morice* in the Books respectively belonging to the said Companies, might be transferred to the said Trustees, with the Dividends thereof, upon the several Trusts in the Bill specified: And as to so much as the said *Humphrey Morice* had disposed of to his own proper Use, that the Respondent *Catherine Morice* might be decreed, out of her said Husband's Assets, to make good the same, with the Dividends thereof; and might also pay the said Sum of 104*l.* 10*s.* 2*d.* to Trustees, to be appointed in manner in the said Bill mentioned; and might pay to the said *Ann Colemore* the said 161*l.* 1*s.* 7*d.* and all Dividends on the said Stocks, and all Interest on the said 104*l.* 10*s.* 2*d.* then or thereafter to become due to the said *Ann Colemore*.

29 January 1733. Mrs. Morice's Answer thereto.

To this Bill likewise the Respondent *Katharine Morice* put in her Answer agreeable to the Truth of the Case, and submitted the whole to the Direction of the Court.

2. Feb. 1731. Decree in Colemore's Cause.

The said *Colemore's* Cause was heard before his Honour the Master of the Rolls, on Bill and Answer, when an Account was decreed to be taken of what was due to the said *Ann Colemore* for the Dividends of the said Stocks, and for the Interest of the said 104*l.* 10*s.* 2*d.* and which the Respondent *Katharine Morice* was to pay to the said *Ann Colemore* out of the Assets of the said *Humphrey Morice* in a due Course of Administration; and the Respondent *Katharine* was in like manner, out of the said Assets, to purchase 862*l.* 3*s.* 6*d.* *South Sea Stock*, and 319*l.* 13*s.* *South Sea Annuities*, and lay out 104*l.* 10*s.* 2*d.* in the Purchase of *South Sea Annuities*, and transfer the same to Trustees, to be approved of by the Master, for the Benefit of the Plaintiff *Ann Colemore*, upon such Trusts as therein specified; and the Master was to examine and certify, whether the said 500*l.* *East India Stock* remained in the said *Humphrey Morice's* Name unaltered at his Death, reserving all further Directions to be given touching the same till the Master should have made his Report; and the Respondent *Katharine Morice* was likewise in that Cause decreed to account for the Personal Estate of her said late Husband come to her Hands, and several other Directions were given touching the same.

8. Feb. 1731. Master's Report.

The Master, in pursuance of the said last-mentioned Decree, certified, that the said 500*l.* *East India Stock* remained in the said *Humphrey Morice's* Name unaltered at his Decease; and that the Half Year's Dividend due thereon at *Christmas* then last being 20*l.* was unreceived; and that he had taken an Account of what was due to the said *Ann Colemore* for the Dividends of the several Stocks mentioned in the said Decree at *Midsummer* 1730. and since then become due; and also for the Interest of the said 104*l.* 10*s.* 2*d.* which Dividends and Interest amounted in the whole to 47*l.* 7*s.* 6*d.*

9. Feb. 1731. Order on the Report.

The said *Colemore's* Cause came on again to be heard on the Master's Report, when the Court decreed the Respondent *Katharine Morice* to transfer the said 500*l.* *East India Stock* to Trustees for the said *Ann Colemore*, to be approved of by the Master; and that the said Respondent *Katharine Morice* should pay to the said *Ann Colemore* the said 47*l.* 7*s.* 6*d.* and also the said Half Year's Dividend out of her Testator's Assets in a Course of Administration.

26 Feb. 1731. Subsequent Report.

The Master, by his subsequent Report of this Date, approved of the Respondents *Stephen Ram* and *Isaac Milner* to be Trustees for the said *Ann Colemore*, and which last-mentioned Decree, Orders and Reports in *Colemore's* Cause were duly enrolled; and the Respondent *Katharine Morice*, in pursuance thereof, and in Obedience thereto, on the 27th of *April* 1731. transferr'd the said 500*l.* *East India Stock* to the said *Ram* and *Milner*, and paid the said *Ann Colemore* the said Dividend due at *Michaelmas* then last, and also the said 47*l.* 7*s.* 6*d.*

Note, Both the Bills, upon which the above Decrees were obtained, were filed before any Suit was commenced, either in Law or Equity, by any one of the other Creditors: But afterwards, viz.

28 Dec. 1731. Action by the Bank.

The Appellants, the Governor and Company of the Bank of *England*, sued out a special *Latitat* from the Court of King's-Bench against the Respondent *Katharine* the Executrix, tested the 29th of *Nov.* 1731. being the last Day of the Term preceding, and returnable the 24th of *Jan.* then next, being the first Day of the next *Hilary* Term, for Recovery of their Demands out of Mr. *Morice's* Assets; which was served upon the Respondent Mrs. *Morice* the 30th of the same *December*. And

15 Jan. 1731. Action by Snelgrave, the two Pearce's, and Dagg.

William Snelgrave, *James Pearce* and *John Dagg*, three of the Appellants, and *Jeremiah Pearce*, since deceased, whom the Appellant *James Pearce* represents, and who were all simple Contract Creditors, severally sued out *Capias's* by Original in the Court of King's-Bench, each of them tested the same 29th of *Nov.* 1731. and returnable the first Return of the said Term then next against the Respondent *Katharine Morice* the Executrix for Satisfaction of their said Debts; all which Writs were served upon the Respondent *Katharine's* Attorney on the 19th of the same *January*, who agreed to accept the same as good Service upon the Respondent *Katharine*, and undertook to appear thereto. And

28 Of same Jan. Henckell's Action.

The Appellant *James Henckell* sued out a Common *Capias* in the Court of Common Pleas against the Respondent the Executrix, tested the same 29th of *Nov.* 1731. and returnable the first Return of the then next *Hilary* Term, for Recovery of their Debt, which was served upon the Respondent the Executrix the same 18th of *January*. And

In Hilary Term 1731. Action of Grove, Glover, and Voght, Crowley, and Nightingale.

Joseph Grove, whom the Appellant *Elizabeth Grove* represents, and the Appellants *Glover* and *Voght*, and the other Appellants *Crowley* and *Nightingale*, sued out their Writs against the Respondent Mrs. *Morice* the Executrix, returnable at some of the Returns in that Term, which were never formally serv'd upon the Respondent the Executrix; but upon her being acquainted therewith, she order'd her Attorney to file common Bail. And

In Hilary Term 1731. Bill of Weale, and others.

The Appellants *Weale*, *Victorin*, *Hayford*, *John* and *Bearcroft Berdoe*, *Greaves*, *Hardwell*, *Rutland*, *Godfrey*, *North*, *John Fell* the Elder, and *John Fell* the Younger, with several other Creditors, filed their Bill in Chancery against the Respondent *Katharine Morice*, for Satisfaction of their Demands out of her Testator's Assets, and to subject his Real Estate to the Payment of his Debts, according to the Directions of his Will. And the other Respondents brought Actions for their several Demands, but have not appealed from the said Decree. So that Mrs. *Morice*, by the first Term after her Husband's Death, had Suits commenced against her in Law and Equity, to the Amount of 100,000*l.*

Difficulties which the Respondent, the Executrix was under.

Mrs. *Morice* appeared to all the said Actions, and also to several other Actions that had been brought by others of the Creditors, upon the Return of the several Writs, and Declarations having been deliver'd, and Rules to plead given in the several Actions at Law, the Respondent Mrs. *Morice* the Executrix, was under very great Difficulties how to plead to these Actions at Law, so as to prevent any Hazard of being charged out of her own Estate; the Decrees that were so obtain'd against her not being pleadable at Law. And as the most safe Way, she was advis'd to plead to all the several Actions by way of special *plene Administravit*, that there were such and such Specialties, and that she had not in her Hands at the Time of their several Actions brought, Assets beyond 1000*l.* and immediately to file her Bill in Chancery, stating the whole Circumstances of her Case, and praying the Directions, Indemnity and Protection of that Court.

Length of her Pleas at Law.

This Plea running to a very great Length, being above 250 Sheets of Paper, and it being necessary to put in the same Plea to every one of the said Actions, it was impossible for the Respondent the Executrix to get these Pleas ready prepared and ingrossed, in order to be deliver'd within the Time limited by the common Rules of the Court, which is but four Days after the Declaration deliver'd. And therefore

27 Jan. 1731. Time to plead in Henckell's Action, enlarged for a Week.

The Respondent *Katharine* the Executrix, from the absolute Necessity of the Case, moved the Court of Common Pleas in the Action wherein the Appellant *Henckell* was Plaintiff, for enlarging the Time to plead, upon an Affidavit she had made the 25th of the same *January*, stating the Number of Actions, and that her Testator's Affairs were on his Death found very much involv'd in Debt, and in the greatest Disorder and Confusion, inasmuch that she had not been able to settle or reduce the same to any Certainty, either as to his Debts, or the Natures and Kinds thereof, or what the Amount of his Effects would be. And that there had then already appear'd Debts to greatly more than 100,000*l.* which his Assets then come to her Hands would fall short of.

And

And upon which Motion the Court gave her a Week's Time to plead. And

In the several other Actions, wherein the Appellants *Snelgrave*, *James Pearce*, and *John Dagg*, and the said *Jeremiah Pearce*, were Plaintiffs, the Respondent *Katharine* the Executrix had the like Time given her to plead, as in *Henckell's* Action; but she was to plead to Issue, and accept Notice of Trial that Term. And

In two other of the Actions, wherein the Governor and Company of the Bank of England and *Thomas Groffe* were Plaintiffs, the Respondent the Executrix likewise had Time to plead till *Saturday* then next, on the like Terms of pleading to Issue; and taking Notice of Trial within the Term; and in these two last-mention'd Actions only, the said Respondent was by Consent not to confess Judgment in that or any other Court for any Demand of the same or the like Kind with the Plaintiffs in those Actions.

The Respondent *Katharine* the Executrix pleaded to all the said several Actions at Law, Bonds and Specialties, owing by her said Testator, to the Amount of 15,000*l.* and that she had only 1000*l.* Assets to pay; and upon this Plea the Plaintiffs in the said several Actions, except the Bank, took Judgment out of Assets, when they should come to her Hands; and all the Appellants who took such Judgments, signed their interlocutory Judgments, as of *Hilary* Term, except *Crowley* and *Nightingale*, who did not sign their Judgments till *Trinity* Term 1732. and *White* and *Maffey*, who did not sign their Judgments till *Hilary* Term 1733.

The Appellant *Henckell* took Judgments of Assets *quando acciderint*, which was then signed and enter'd up; and the 9th of the same Feb. a Writ of Enquiry of Damages was afterwards executed; upon which the Jury found 2089*l.* 5*s.* Damages and Costs, and on the 16th of Feb. Judgment was given for the Appellant *Henckell* for 2135*l.* for Damages and Costs; which Judgment was sign'd and enter'd the same Day.

All the other Appellants, except the Bank, took the like Judgments out of the Assets *de futuro*, and Mrs. *Morice* at their Request, and after *Henckell's* having executed his said Writ of Enquiry, viz. on the 11th of February 1731. to save the Estate the Expence of executing Writs of Enquiries, and on an Agreement that Matters should stand in all respects the same as if a Writ of Enquiry had been executed; and that the said other Appellants should be in the same Condition as *Henckell*, confessed Damages to the said other Appellants.

Note, None of the Appellants except *Henckell*, signed their Judgments of Assets *quando acciderint*, till after the 18th of April 1732. except *Glover* and *Voght*, and they did not sign theirs till the 8th of March 1731.

The Bank refused to take Judgments of Assets *quando acciderint*, but replied to Mrs. *Morice's* Plea, and went to Trial, and by that Means their Judgment is left of all, being of *Hilary*-Term 1735.

The Cause in Chancery wherein *Weale* and others were Plaintiffs, was heard the 24th of July 1734. when Mr. *Morice's* real Estate was declared to be well subjected to his Debts by his Will, and it was refer'd to the Master, to take an Account of the Demands of the Plaintiffs in that Cause, and an Account was decreed of the Testator's Personal Assets, and of the Rents and Profits of his real Estate; and in Case of a Deficiency, his real Estate was directed to be sold for Payment of his Debts; and the Respondent *Katharine* the Executrix, was ordered to administer the Assets in a Course of Administration, and all usual Directions were given for taking the said Accounts.

And before the actual Signing of any of the said Judgments, save only *Henckell's* interlocutory Judgment,

The Respondent *Katharine Morice*, exhibited her Bill in the Court of Chancery against the several Parties above-named Creditors, by the said two Decrees and Judgments of the said *Humphrey Morice*, setting forth the said two Decrees that had been obtained against her in the Court of Chancery, and the Payments she had made in Obedience thereto, and likewise stating the several Actions and Proceedings that had been carried on against her in the Courts of Law by the other Creditors, and the Difficulties she was brought under by that Means, in the Administration of her Testator's Assets; and that the Appellants, the Judgment Creditors, amongst others, were respectively proceeding against her at Law to take out Execution, hoping thereby to gain an unjust Advantage over her, well knowing she could not, by the Practice of the Courts of Law, either plead the Decrees which had been obtained against her in Equity in Bar of their Actions, or retain Assets of her said Testator to satisfy the said Decrees; and also stating that all the now Appellants, amongst others, threatened to charge her with wasting her Testator's Assets by Payment, amongst other Sums of the said 10,111*l.* which she had paid to the Respondents *Ann*, and *Judith Morice*, in pursuance of the said first Decree, and to make her answer and pay the same out of her own proper Estate, tho' at the same Time she was obliged by the Court of Chancery to pay Obedience to the Decrees of that Court: That on the other Hand, the Respondents who had obtain'd the said two Decrees against her, insisted on an immediate Payment of the Sums decreed to them before Payment of any other Creditors; and threatened to prosecute her for Non-payment, and to oblige her to make good such Assets as should be taken in Execution by the other Creditors; and that therefore she could not be safe either in paying or refusing Obedience to the said Decrees, nor have a just Allowance for what she had already paid and done in pursuance thereof, but was in Danger of being unjustly subjected to make the same good out of her own Estate, without the Aid and Interposition of a Court of Equity; and therefore praying that all Proceedings at Law against her might be stayed by Injunction, and for a Discovery of the Reality of the said Creditors Demands; and that an Account of her Testator's Assets might be taken under the Directions of the Court, and that the same might be administered as far as they would extend in a due Course of Administration; Regard being had to the Nature and Superiority of the Creditors Demands; and that she might be protected and indemnified in paying a due Obedience to the said Decrees in Equity; and likewise praying that the Bank might admit her to transferr and dispose of the said 3000*l.* Bank Stock of her said Testator's, which stood in his Name, which they had refused to let her Transferr, and for general Relief. And,

The Respondent *Katherine* filed her Bill of Revivor and supplemental Bill, in order to revive the said Suit against the Representatives of the Parties who died after filing her original Bill; and by way of Supplement, stating the 2d Decree upon the Master's Report in *Colemore's* Cause, and the subsequent Report in pursuance of such last Decree, and the Obedience she had paid thereto as before stated; and also the subsequent Proceedings on the said Actions at Law, which had been had since the filing her original Bill, and some other Matters no ways material in the present Appeals.

To this Bill the several Defendants thereto put in their respective Answers; and all the Appellants by their Answers, thought proper, amongst other Things, to insist that the said two Decrees were fraudulent, and obtained by Collusion, and therefore the Appellants, the Judgment Creditors, insisted they ought not to be restrained from proceeding at Law for Recovery of their respective Demands against this Respondent; and that she had brought these Difficulties upon her self, and that there was no Foundation for a Court of Equity to interpose to the Prejudice of those who had obtained Judgments at Law; and were equally fair and honest Creditors with those to whom, as they alleged, this Respondent had contrived to give an undue Preference, and they also insisted, that their Judgments ought to be preferred to the said two Decrees, and to be first satisfied out of the Testator's Assets, in regard a Decree in a Court of Equity, was not, as they were pleased to allege, equal to a Judgment at Law.

And the Appellants *Benjamin Weale*, and his Co-appellants, insisted on a Distribution of the Testator's Assets equally amongst all the Creditors, who were of equal Degree at the Testator's Death, as far as the same would go.

And the Bank by their Answer to the said Bill, further insisted to retain the said 3000*l.* Bank Stock that stood in the Name of the said *Humphrey Morice* at his Death, towards Satisfaction of their Debt.

The Respondents the Creditors under the two first Decrees, by their Answer insisted, that the said Decrees were fairly obtained, and denied all Fraud and Collusion; and that the several Demands thereby established were just; and that the said Decrees being prior to any other Decree or Judgment obtained against this Respondent, (except a Judgment obtained by one Mr. *Maynard*, in the Justice of which all Parties acquiesced) they therefore insisted that their Demands under the said Decrees ought to be paid prior to any of the Appellants Demands.

This Respondent, pursuant to several Orders in this Cause, paid into to the Bank the several Sums due to several of the Judgment Creditors who had obtained Judgments against her; amounting to 14,784*l.* 5*s.* 3*d.* whereupon the Injunction that had been before granted against the several Defendants was continued till the Hearing of the Cause; but they were to be at Liberty to proceed on their Judgments, so far as to make this Respondent personally liable in point of Law, but not to take out Execution without Leave of the Court of Chancery; and which all the Appellants the Judgment Creditors have done, and have all of them got *Devastavit's* returned against this Respondent, she not being able to justify herself at Law under the several Decrees.

Witnesses having been examined, and Publication passed in this Respondent's said Cause, the same came on to be heard before his Honour the Master of the Rolls, who after a Hearing of 6 Days, amongst other Things decreed, That the now Appellants, the Judgment Creditors, and the rest of the Creditors of the said *Humphrey Morice*, should be injoin'd from proceeding at Law against this Respondent, for so much of the Assets of the said *Humphrey Morice*, as was recovered by the said Decrees of the 25th of January, and the 2d and 9th of Feb. 1731. and the Defendants, the Bank of England, were also ordered to permit the Respondent *Katharine* to transferr the 3000*l.* Bank Stock, standing in the Name of the said *Humphrey Morice*, which was to be considered as his Assets; and several Directions were given for carrying the said Decree into Execution.

All the present Appellants appealed from this Decree of his Honour the Master of the Rolls, to the Right Honourable the late Lord Chancellor *Talbot*, and the said Cause coming on to be heard on such Appeals, his Lordship on the 6th of Nov. 1736. after a most deliberate Hearing of 7 Days Continuance, ordered and decreed, That it should be referred to the Master, to take an Account of what is due to the several Creditors of the said *Humphrey Morice*, by Decrees and Judgments on their Decrees and Judgments; and also of what is due to the other Creditors of the said *Humphrey Morice*, who had not obtained Decrees or Judgments; but in taking the Account of what is due to the Respondents *Ann*, and *Judith Morice*, under the said Decree of the 25th of January 1731. the Master is to enquire what was reasonable to be allowed to their Father the said *Humphrey Morice*, for their Maintenance, from the time they respectively attained the Age of 21 Years, till the time of his Death, and to deduct the same out of what shall be found due to them; and the Master is also to take an Account of the Personal Estate of the said *Humphrey Morice*, which hath come to the Hands of this Respondent, or any other for her Use, and the same, together with what should be received by her, or any other Person for her Use, is decreed to be applied, in the first Place, to pay what shall be found due to the several Plaintiffs under the said Decree of the 25th of January 1731. and then to pay what shall be found due to the Plaintiffs under the said Decrees of the 2d and 9th of February 1731. according to the said Decrees; and his Lordship declared, That the 500*l.* East India Stock, mentioned in the said Decrees of the 2d and 9th of February 1731. and the Dividends received for the same since the Death of the said *Humphrey Morice*, ought not to be considered as any Part of his Assets, he being only a Trustee thereof; and it was further ordered, That after Payment of what shall be found due on the said Decrees, the Residue of the said Testator's Assets be applied to the Payment of the several Judgments; and of what is due on the Decree in the Cause wherein the said *Weale* and others are Plaintiffs, according

same Jan. Like time in several other of said Actions.

eb. 1731. Time given to plead in 2 other Actions.

b. 1731. Pleas put in.

eb. 1731. Henckell's interlocutory Judgment. same Feb. Writs of Enquiry, and final Judgment.

e. Judgments taken by the rest, except the k. Feb. 1731. Damages confessed.

en Judgments signed.

24 July 1734. Decree in Weale's Cause.

3 Feb. 1731. Bill filed by this Respondent.

7 May 1734. Bill of Revivor, and Supplemental Bill.

Answers thereto.

Of the Judgment Creditors.

Answers of Weale, and others.

Answer of the Bank.

Answer of the Creditors under the 2 first Decrees.

14,784*l.* 5*s.* 3*d.* Paid into the Bank by this Respondent.

8 Aug. 1735. Decree at the Rolls.

Appeal therefrom to the late Chancellor. Nov. 1736. The late Chancellor's Decree.

according to their respective Priorities; and if any thing should remain, then to the Payment of the other Creditors of the said *Humphrey Morice* in a Course of Administration; and the Defendants the Bank of England, were decreed to permit the Respondent *Katharine* to transfer the 3000 *l.* Bank Stock, standing in their Books in her Testator's Name, which was to be considered as his Assets, and the Dividends thereof due, and to grow due, were to be laid out in *South Sea Annuities*, in the Name of the Accomptant General, subject to further Order; and it was further ordered, That the Money which had been paid into the Bank by this Respondent, should be laid out in *South Sea Annuities*, in the Name of the Accomptant General, subject to further Order; and the several Defendants who had obtained Judgments at Law, or who had not as yet obtained any Judgment or Decree, were injoin'd from proceeding at Law against this Respondent for Recovery of their Debts to them respectively due from the said *Humphrey Morice*, and all Parties were at Liberty to apply to the Court for further Directions, and were to be paid their Costs, to be taxed by the Master, out of the Testator's Personal Estate.

From which Decree, the Appellants have brought four several Appeals to your Lordships; but this Respondent is advised, and humbly apprehends, that the same is Right in all its Parts, and agreeable to the Rules of Equity and Conscience; and ought to be Affirmed, and that the several Appeals therefrom, as against her, ought to be Dismissed with Costs, for the following, amongst many other,

REASONS.

- REASONS. I. For that a Decree of a Court of Equity has always been considered as equal to a Judgment, and if prior in Time, is preferable in the Course of Payment; and as the Executrix is bound to obey the Decree, tho' at the same time she cannot plead it at Law, in Justification of her Obedience, it is but Justice that the Court of Equity should protect the Executrix, and support the Authority of its own Decrees.
- II. For that the Demands established by the Decrees were originally of equal Degree, and of equal Justice with any of the Appellants Demands, and the Respondents the Decree Creditors, having by their Priority of Suit, and their Decrees, raised the Nature of their Demands to a superior Degree, the Respondent the Executrix was bound by the Course of Administration to give them the Preference; and if a Trust Creditor, whose Remedy lies only in Equity, should not have the same Advantage of his Diligence of Suit, and the Priority of his Decree, as a legal Creditor would have from a prior Judgment, or if the Executor should not be equally protected in the Payment of a prior Decree, as of a prior Judgment, either the Equity Creditor, or the Executor, or both, must be inevitably ruined in all Cases of a Deficiency of Assets.

Objection. That the Decrees, which give the Priority, were obtained by Collusion, and undue Preference, and therefore the Respondent the Executrix has no Right in Equity to be protected under those Decrees.

Answer. The Instances of Collusion and undue Preference, which the Appellants insisted on, and pretended at the Hearing, were, That the Demands in those Bills were fictitious; that the Respondent the Executrix answered the Bills in Equity without the Compulsion of Process; that the Cause was heard upon Bill and Answer; and that the Hearing thereof was expeditiously brought on by Consent.

In Answer thereto the Respondent humbly insists,

1st. That the Reality and Justice of the Demands is established beyond all Contradiction and Doubt, nor did the Appellants examine a single Witness to disprove or draw a Suspicion on them.

2^{dly}. That it is far from being a Misbehaviour in an Executor to answer the Demand of an honest Suitor, either at Law or in Equity, without the Compulsion of Process, and the Interval of Time betwixt the filing of the Bills and Answers, being no less than about five Weeks, shews, that there was Room enough to have served the Process of the Court in all its Forms.

3^{dly}. As to the Hearing of the Causes upon Bill and Answer, it was impossible for the Respondent the Executrix to avoid it; for the Plaintiffs having particularly charged in their Bills all the Circumstances of their Demands, and all the Facts which were necessary to intitle them to a Decree, and having interrogated the Executrix in the strictest Manner, to her Knowledge, Information, and Belief thereof, she could not, without the Guilt of Perjury, avoid disclosing the whole Truth of her Knowledge, Information, and Belief; and if, from the Facts which she was bound to disclose, the Court thought there was a sufficient Ground for a Decree, there is no Foundation for calling it a collusive one; and the Respondent had so strict a Regard to Truth, that the Appellants have not been able to falsify the Answer in the most minute Circumstance; and as the Law even allows an Executrix voluntarily to confess a Judgment, without the least Imputation of Fraud, where the Debt is real and just, so this Case is much more favourable, where the Answer to the Demand is solemnly put in upon Oath, and the Justice thereof is supported by incontestable Proof.

4^{thly}. The Circumstance of hearing the Cause by Consent has no Manner of Influence on the Merits, nor is the Executrix obliged, by the Rules of Law or Equity, to stand out the whole Length of the Process against Suitors (especially the first of all the Suitors) or to delay them to the last Moment, and that too in order only that the Appellants themselves may gain that very Preference which they complain of in the Respondents; and the rather, for that the Respondent the Executrix has, in every Instance consistent with her Safety, avoided Delay and Litigation; for her Pleas at Law, tho' fourteen in Number, and each Plea containing 250 Sheets, were put in within a third Part of the Time that was taken to put in her two Answers, and Damages confessed, to save the Trouble and Expence of Writs of Enquiry, nor is there an Instance of affected Delay on her Part throughout the whole Proceeding.

General Objection. Equality is the favourite Rule of a Court of Equity, and the Respondent the Executrix ought never to be protected in inclining more to one Set of Creditors than another.

Answer. This is rather an Objection to the Law than the Justice of the Decree; for it is not in the Power, either of a Court of Law or Equity, to make an Equality amongst Creditors, who have Claims upon legal Assets, which are a Fund for the Payment of Demands in such Order and Degree as the Law has prescribed; and a Preference must of Necessity be made amongst Creditors, where the Assets are not sufficient to pay all the Creditors their full Demands; and if the Executrix has not, in this Case, transgressed the Rules of Law and Equity concerning the Administration of Assets, 'tis hoped she shall not be punished out of her own Estate, she being under an absolute Necessity of giving a Preference to some of the Creditors, in Exclusion of others; and the Hardships now complained of, must, from the Nature and Necessity of the Thing, either fall upon the present Appellants, or on other Creditors, under Circumstances at least equally favourable.

As to the 3000 *l.* Bank Stock standing in the Testator's Name at his Death, it is apprehended there is no Manner of Foundation for the Bank to retain the same towards Satisfaction of their Demands.

Upon the Whole therefore, this Respondent humbly hopes, That the said Decree of the late Lord Chancellor Talbot, of the 6th Day of November 1736. so solemnly pronounced as aforesaid, shall be Affirmed, and that each of the said Four Appeals therefrom, shall be Dismissed with Costs.

D. RYDER.

J. BROWNE.

N. FAZAKERLEY.

To be Heard at the Bar of the House of Lords,
on the Day of 1737.

The CASE of the Respondent Katharine Morice.

The Governor and Company of the Bank of England - Appellants.
James Henckell, and Others - Appellants.
Theodofia Crowley, and Another - Appellants.
Benjamin Weale, and Others - Appellants.
Katharine Morice, Widow and Respondent Executrix of Humphrey Morice, to all the said Eqs; decreed, and Others - Appellants.